



28 AMENDS:

29 **10-1-303**, as last amended by Laws of Utah 2000, Chapter 251

30 **10-1-307**, as last amended by Laws of Utah 2009, Chapter 212

31 **59-12-102**, as last amended by Laws of Utah 2009, Chapters 203 and 314

32 **59-12-123**, as enacted by Laws of Utah 2008, Chapter 384

33 **59-12-211**, as enacted by Laws of Utah 2008, Chapter 384

34 ENACTS:

35 **59-12-211.1**, Utah Code Annotated 1953



37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section **10-1-303** is amended to read:

39 **10-1-303. Definitions.**

40 As used in this part:

41 (1) "Commission" means the State Tax Commission.

42 (2) "Contractual franchise fee" means:

43 (a) a fee:

44 (i) provided for in a franchise agreement; and

45 (ii) that is consideration for the franchise agreement; or

46 (b) (i) a fee similar to Subsection (2)(a); or

47 (ii) any combination of Subsections (2)(a) and (b).

48 (3) (a) "Delivered value" means the fair market value of the taxable energy delivered

49 for sale or use in the municipality and includes:

50 (i) the value of the energy itself; and

51 (ii) any transportation, freight, customer demand charges, services charges, or other

52 costs typically incurred in providing taxable energy in usable form to each class of customer in

53 the municipality.

54 (b) "Delivered value" does not include the amount of a tax paid under:

55 (i) Title 59, Chapter 12, [~~Part 1, Tax Collection;~~] Sales and Use Tax Act; or

56 [~~(ii) Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act; or]~~

57 [~~(iii)~~] (ii) this part.

58 (4) "De minimis amount" means an amount of taxable energy that does not exceed the

59 greater of:

60 (a) 5% of the energy supplier's estimated total Utah gross receipts from sales of  
61 property or services; or

62 (b) \$10,000.

63 (5) "Energy supplier" means a person supplying taxable energy, except that the  
64 commission may by rule exclude from this definition a person supplying a de minimis amount  
65 of taxable energy.

66 (6) "Franchise agreement" means a franchise or an ordinance, contract, or agreement  
67 granting a franchise.

68 (7) "Franchise tax" means:

69 (a) a franchise tax;

70 (b) a tax similar to a franchise tax; or

71 (c) any combination of Subsections (7)(a) and (b).

72 (8) "Person" is as defined in Section 59-12-102.

73 (9) "Taxable energy" means gas and electricity.

74 Section 2. Section **10-1-307** is amended to read:

75 **10-1-307. Administration, collection, and enforcement of taxes by commission --**  
76 **Distribution of revenues -- Charge for services -- Collection of taxes by municipality.**

77 (1) Except as provided in Subsection (3), the commission shall administer, collect, and  
78 enforce the municipal energy sales and use tax from energy suppliers according to the  
79 procedures established in:

80 (a) Title 59, Chapter 1, General Taxation Policies; and

81 (b) Title 59, Chapter 12, Part 1, Tax Collection, except for Sections 59-12-107.1 and  
82 59-12-123.

83 (2) (a) Except as provided in Subsections 10-1-203(3)(d), 10-1-305(5), and  
84 10-1-310(2) and subject to Subsection (6), the commission shall pay a municipality the  
85 difference between:

86 (i) the entire amount collected by the commission from the municipal energy sales and  
87 use tax authorized by this part based on:

88 (A) the point of sale of the taxable energy if a taxable sale occurs in a municipality that  
89 imposes a municipal energy sales and use tax as provided in this part; or

90 (B) the point of use of the taxable energy if the use occurs in a municipality that  
91 imposes a municipal energy sales and use tax as provided in this part; and

92 (ii) the administration fee charged in accordance with Subsection (2)(c).

93 (b) In accordance with Subsection (2)(a), the commission shall transfer to the  
94 municipality monthly by electronic transfer the revenues generated by the municipal energy  
95 sales and use tax levied by the municipality and collected by the commission.

96 (c) (i) The commission shall charge a municipality imposing a municipal energy sales  
97 and use tax a fee for administering the tax at the percentage provided in Section 59-12-206,  
98 except that the commission may not charge a fee for taxes collected by a municipality under  
99 Subsection (3).

100 (ii) The fee charged under Subsection (2)(c)(i) shall be:

101 (A) deposited in the Sales and Use Tax Administrative Fees Account; and

102 [~~(B) used for sales tax administration as provided in Subsection 59-12-206(2).]~~

103 (B) expended to administer the municipal energy sales and use tax imposed under this  
104 part.

105 (3) An energy supplier shall pay the municipal energy sales and use tax revenues it  
106 collects from its customers under this part directly to each municipality in which the energy  
107 supplier has sales of taxable energy if:

108 (a) the municipality is the energy supplier; or

109 (b) (i) the energy supplier estimates that the municipal energy sales and use tax  
110 collected annually by the energy supplier from its Utah customers equals \$1,000,000 or more;  
111 and

112 (ii) the energy supplier collects the tax imposed by this part.

113 (4) An energy supplier paying a tax under this part directly to a municipality may retain  
114 the percentage of the tax authorized under Subsection 59-12-108(2) for the energy supplier's  
115 costs of collecting and remitting the tax.

116 (5) An energy supplier paying the tax under this part directly to a municipality shall file  
117 an information return with the commission, at least annually, on a form prescribed by the  
118 commission.

119 (6) (a) As used in this Subsection (6):

120 (i) "2005 base amount" means, for a municipality that imposes a municipal energy

121 sales and use tax, the natural gas portion of municipal energy sales and use tax proceeds paid to  
122 the municipality for fiscal year 2005.

123 (ii) "2006 base amount" means, for a municipality that imposes a municipal energy  
124 sales and use tax, the natural gas portion of municipal energy sales and use tax proceeds paid to  
125 the municipality for fiscal year 2006, reduced by the 2006 rebate amount.

126 (iii) "2006 rebate amount" means, for a municipality that imposes a municipal energy  
127 sales and use tax, the difference between:

128 (A) the natural gas portion of municipal energy sales and use tax proceeds paid to the  
129 municipality for fiscal year 2006; and

130 (B) the 2005 base amount, plus:

131 (I) 10% of the 2005 base amount; and

132 (II) the natural gas portion of municipal energy sales and use tax proceeds paid to the  
133 municipality for fiscal year 2006 attributable to an increase in the rate of the municipal energy  
134 sales and use tax implemented by the municipality during fiscal year 2006.

135 (iv) "2007 rebate amount" means, for a municipality that imposes a municipal energy  
136 sales and use tax, the difference between:

137 (A) the natural gas portion of municipal energy sales and use tax proceeds paid to the  
138 municipality for fiscal year 2007; and

139 (B) the 2006 base amount, plus:

140 (I) 10% of the 2006 base amount; and

141 (II) the natural gas portion of municipal energy sales and use tax proceeds paid to the  
142 municipality for fiscal year 2007 attributable to an increase in the rate of the municipal energy  
143 sales and use tax implemented by the municipality during fiscal year 2007.

144 (v) "Fiscal year 2005" means the period beginning July 1, 2004 and ending June 30,  
145 2005.

146 (vi) "Fiscal year 2006" means the period beginning July 1, 2005 and ending June 30,  
147 2006.

148 (vii) "Fiscal year 2007" means the period beginning July 1, 2006 and ending June 30,  
149 2007.

150 (viii) "Gas supplier" means an energy supplier that supplies natural gas.

151 (ix) "Natural gas portion" means the amount of municipal energy sales and use tax

152 proceeds attributable to sales and uses of natural gas.

153 (b) (i) In December 2006, each gas supplier shall reduce the natural gas portion of  
154 municipal energy sales and use gas proceeds to be paid to a municipality by the 2006 rebate  
155 amount.

156 (ii) If the 2006 rebate amount exceeds the amount of the natural gas portion of  
157 municipal energy sales and use tax proceeds for December 2006, the gas supplier shall reduce  
158 the natural gas portion of municipal energy sales and use tax proceeds to be paid to a  
159 municipality each month thereafter until the 2006 rebate amount is exhausted.

160 (iii) For December 2006 and for each month thereafter that the gas supplier is required  
161 under Subsection (6)(b)(ii) to reduce the natural gas portion of municipal energy sales and use  
162 tax proceeds to be paid to a municipality:

163 (A) each municipality imposing a municipal energy sales and use tax shall provide the  
164 gas supplier with the amount by which its municipal energy sales and use tax rate applicable to  
165 the sales and uses of natural gas would need to be reduced in order to reduce the natural gas  
166 portion of municipal energy sales and use tax proceeds by the same amount as the reduction to  
167 the municipality; and

168 (B) each gas supplier shall reduce the municipal energy sales and use tax rate  
169 applicable to sales and uses of natural gas by the amount of the tax rate reduction provided by  
170 the municipality.

171 (c) (i) In December 2007, each gas supplier shall reduce the natural gas portion of  
172 municipal energy sales and use tax proceeds to be paid to a municipality by the 2007 rebate  
173 amount.

174 (ii) If the 2007 rebate amount exceeds the amount of the natural gas portion of  
175 municipal energy sales and use tax proceeds for December 2007, the gas supplier shall reduce  
176 the natural gas portion of municipal energy sales and use tax proceeds to be paid to a  
177 municipality each month thereafter until the 2007 rebate amount is exhausted.

178 (iii) For December 2007 and for each month thereafter that the gas supplier is required  
179 under Subsection (6)(c)(ii) to reduce the natural gas portion of municipal energy sales and use  
180 tax proceeds to be paid to a municipality:

181 (A) each municipality imposing a municipal energy sales and use tax shall provide the  
182 gas supplier with the amount by which its municipal energy sales and use tax rate applicable to

183 the sales and uses of natural gas would need to be reduced in order to reduce the natural gas  
184 portion of municipal energy sales and use tax proceeds by the same amount as the reduction to  
185 the municipality; and

186 (B) each gas supplier shall reduce the municipal energy sales and use tax rate  
187 applicable to sales and uses of natural gas by the amount of the tax rate reduction provided by  
188 the municipality.

189 (d) Nothing in this Subsection (6) may be construed to require a reduction under  
190 Subsection (6)(b) or (c) if the rebate amount is zero or negative.

191 Section 3. Section **59-12-102** is amended to read:

192 **59-12-102. Definitions.**

193 As used in this chapter:

194 (1) "800 service" means a telecommunications service that:

195 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and

196 (b) is typically marketed:

197 (i) under the name 800 toll-free calling;

198 (ii) under the name 855 toll-free calling;

199 (iii) under the name 866 toll-free calling;

200 (iv) under the name 877 toll-free calling;

201 (v) under the name 888 toll-free calling; or

202 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the

203 Federal Communications Commission.

204 (2) (a) "900 service" means an inbound toll telecommunications service that:

205 (i) a subscriber purchases;

206 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to  
207 the subscriber's:

208 (A) prerecorded announcement; or

209 (B) live service; and

210 (iii) is typically marketed:

211 (A) under the name 900 service; or

212 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal

213 Communications Commission.

- 214 (b) "900 service" does not include a charge for:
- 215 (i) a collection service a seller of a telecommunications service provides to a
- 216 subscriber; or
- 217 (ii) the following a subscriber sells to the subscriber's customer:
- 218 (A) a product; or
- 219 (B) a service.
- 220 (3) (a) "Admission or user fees" includes season passes.
- 221 (b) "Admission or user fees" does not include annual membership dues to private
- 222 organizations.
- 223 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 224 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 225 Agreement after November 12, 2002.
- 226 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 227 (a) listed under Subsection (6); and
- 228 (b) that are imposed within a local taxing jurisdiction.
- 229 (6) "Agreement sales and use tax" means a tax imposed under:
- 230 (a) Subsection 59-12-103(2)(a)(i)(A);
- 231 (b) Subsection 59-12-103(2)(b)(i);
- 232 (c) Subsection 59-12-103(2)(c)(i);
- 233 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 234 (e) Section 59-12-204;
- 235 (f) Section 59-12-401;
- 236 (g) Section 59-12-402;
- 237 (h) Section 59-12-501;
- 238 (i) Section 59-12-502;
- 239 (j) Section 59-12-703;
- 240 (k) Section 59-12-802;
- 241 (l) Section 59-12-804;
- 242 (m) Section 59-12-1001;
- 243 (n) Section 59-12-1102;
- 244 (o) Section 59-12-1302;

- 245 (p) Section 59-12-1402;
- 246 (q) Section 59-12-1503;
- 247 (r) Section 59-12-1703;
- 248 (s) Section 59-12-1802;
- 249 (t) Section 59-12-1903;
- 250 (u) Section 59-12-2003; or
- 251 (v) Section 59-12-2103.
- 252 (7) "Aircraft" is as defined in Section 72-10-102.
- 253 (8) "Alcoholic beverage" means a beverage that:
- 254 (a) is suitable for human consumption; and
- 255 (b) contains .5% or more alcohol by volume.
- 256 (9) (a) "Ancillary service" means a service associated with, or incidental to, the
- 257 provision of telecommunications service.
- 258 (b) "Ancillary service" includes:
- 259 (i) a conference bridging service;
- 260 (ii) a detailed communications billing service;
- 261 (iii) directory assistance;
- 262 (iv) a vertical service; or
- 263 (v) a voice mail service.
- 264 (10) "Area agency on aging" is as defined in Section 62A-3-101.
- 265 (11) "Assisted amusement device" means an amusement device, skill device, or ride
- 266 device that is started and stopped by an individual:
- 267 (a) who is not the purchaser or renter of the right to use or operate the amusement
- 268 device, skill device, or ride device; and
- 269 (b) at the direction of the seller of the right to use the amusement device, skill device,
- 270 or ride device.
- 271 (12) "Assisted cleaning or washing of tangible personal property" means cleaning or
- 272 washing of tangible personal property if the cleaning or washing labor is primarily performed
- 273 by an individual:
- 274 (a) who is not the purchaser of the cleaning or washing of the tangible personal
- 275 property; and

276 (b) at the direction of the seller of the cleaning or washing of the tangible personal  
277 property.

278 (13) "Authorized carrier" means:

279 (a) in the case of vehicles operated over public highways, the holder of credentials  
280 indicating that the vehicle is or will be operated pursuant to both the International Registration  
281 Plan and the International Fuel Tax Agreement;

282 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating  
283 certificate or air carrier's operating certificate; or

284 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling  
285 stock, the holder of a certificate issued by the United States Surface Transportation Board.

286 (14) (a) Except as provided in Subsection (14)(b), "biomass energy" means any of the  
287 following that is used as the primary source of energy to produce fuel or electricity:

288 (i) material from a plant or tree; or

289 (ii) other organic matter that is available on a renewable basis, including:

290 (A) slash and brush from forests and woodlands;

291 (B) animal waste;

292 (C) methane produced:

293 (I) at landfills; or

294 (II) as a byproduct of the treatment of wastewater residuals;

295 (D) aquatic plants; and

296 (E) agricultural products.

297 (b) "Biomass energy" does not include:

298 (i) black liquor;

299 (ii) treated woods; or

300 (iii) biomass from municipal solid waste other than methane produced:

301 (A) at landfills; or

302 (B) as a byproduct of the treatment of wastewater residuals.

303 (15) (a) "Bundled transaction" means the sale of two or more items of tangible personal  
304 property, products, or services if the tangible personal property, products, or services are:

305 (i) distinct and identifiable; and

306 (ii) sold for one nonitemized price.

- 307 (b) "Bundled transaction" does not include:
- 308 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 309 the basis of the selection by the purchaser of the items of tangible personal property included in
- 310 the transaction;
- 311 (ii) the sale of real property;
- 312 (iii) the sale of services to real property;
- 313 (iv) the retail sale of tangible personal property and a service if:
- 314 (A) the tangible personal property:
- 315 (I) is essential to the use of the service; and
- 316 (II) is provided exclusively in connection with the service; and
- 317 (B) the service is the true object of the transaction;
- 318 (v) the retail sale of two services if:
- 319 (A) one service is provided that is essential to the use or receipt of a second service;
- 320 (B) the first service is provided exclusively in connection with the second service; and
- 321 (C) the second service is the true object of the transaction;
- 322 (vi) a transaction that includes tangible personal property or a product subject to
- 323 taxation under this chapter and tangible personal property or a product that is not subject to
- 324 taxation under this chapter if the:
- 325 (A) seller's purchase price of the tangible personal property or product subject to
- 326 taxation under this chapter is de minimis; or
- 327 (B) seller's sales price of the tangible personal property or product subject to taxation
- 328 under this chapter is de minimis; and
- 329 (vii) the retail sale of tangible personal property that is not subject to taxation under
- 330 this chapter and tangible personal property that is subject to taxation under this chapter if:
- 331 (A) that retail sale includes:
- 332 (I) food and food ingredients;
- 333 (II) a drug;
- 334 (III) durable medical equipment;
- 335 (IV) mobility enhancing equipment;
- 336 (V) an over-the-counter drug;
- 337 (VI) a prosthetic device; or

- 338 (VII) a medical supply; and
- 339 (B) subject to Subsection (15)(f):
  - 340 (I) the seller's purchase price of the tangible personal property subject to taxation under
  - 341 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
  - 342 (II) the seller's sales price of the tangible personal property subject to taxation under
  - 343 this chapter is 50% or less of the seller's total sales price of that retail sale.
- 344 (c) (i) For purposes of Subsection (15)(a)(i), tangible personal property, a product, or a
- 345 service that is distinct and identifiable does not include:
  - 346 (A) packaging that:
    - 347 (I) accompanies the sale of the tangible personal property, product, or service; and
    - 348 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
    - 349 service;
  - 350 (B) tangible personal property, a product, or a service provided free of charge with the
  - 351 purchase of another item of tangible personal property, a product, or a service; or
  - 352 (C) an item of tangible personal property, a product, or a service included in the
  - 353 definition of "purchase price."
- 354 (ii) For purposes of Subsection (15)(c)(i)(B), an item of tangible personal property, a
- 355 product, or a service is provided free of charge with the purchase of another item of tangible
- 356 personal property, a product, or a service if the sales price of the purchased item of tangible
- 357 personal property, product, or service does not vary depending on the inclusion of the tangible
- 358 personal property, product, or service provided free of charge.
- 359 (d) (i) For purposes of Subsection (15)(a)(ii), property sold for one nonitemized price
- 360 does not include a price that is separately identified by product on the following, regardless of
- 361 whether the following is in paper format or electronic format:
  - 362 (A) a binding sales document; or
  - 363 (B) another supporting sales-related document that is available to a purchaser.
- 364 (ii) For purposes of Subsection (15)(d)(i), a binding sales document or another
- 365 supporting sales-related document that is available to a purchaser includes:
  - 366 (A) a bill of sale;
  - 367 (B) a contract;
  - 368 (C) an invoice;

- 369 (D) a lease agreement;
- 370 (E) a periodic notice of rates and services;
- 371 (F) a price list;
- 372 (G) a rate card;
- 373 (H) a receipt; or
- 374 (I) a service agreement.

375 (e) (i) For purposes of Subsection (15)(b)(vi), the sales price of tangible personal  
376 property or a product subject to taxation under this chapter is de minimis if:

377 (A) the seller's purchase price of the tangible personal property or product is 10% or  
378 less of the seller's total purchase price of the bundled transaction; or

379 (B) the seller's sales price of the tangible personal property or product is 10% or less of  
380 the seller's total sales price of the bundled transaction.

381 (ii) For purposes of Subsection (15)(b)(vi), a seller:

382 (A) shall use the seller's purchase price or the seller's sales price to determine if the  
383 purchase price or sales price of the tangible personal property or product subject to taxation  
384 under this chapter is de minimis; and

385 (B) may not use a combination of the seller's purchase price and the seller's sales price  
386 to determine if the purchase price or sales price of the tangible personal property or product  
387 subject to taxation under this chapter is de minimis.

388 (iii) For purposes of Subsection (15)(b)(vi), a seller shall use the full term of a service  
389 contract to determine if the sales price of tangible personal property or a product is de minimis.

390 (f) For purposes of Subsection (15)(b)(vii)(B), a seller may not use a combination of  
391 the seller's purchase price and the seller's sales price to determine if tangible personal property  
392 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales  
393 price of that retail sale.

394 (16) "Certified automated system" means software certified by the governing board of  
395 the agreement that:

396 (a) calculates the agreement sales and use tax imposed within a local taxing  
397 jurisdiction:

398 (i) on a transaction; and

399 (ii) in the states that are members of the agreement;

400 (b) determines the amount of agreement sales and use tax to remit to a state that is a  
401 member of the agreement; and

402 (c) maintains a record of the transaction described in Subsection (16)(a)(i).

403 (17) "Certified service provider" means an agent certified:

404 (a) by the governing board of the agreement; and

405 (b) to perform all of a seller's sales and use tax functions for an agreement sales and  
406 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's  
407 own purchases.

408 (18) (a) Subject to Subsection (18)(b), "clothing" means all human wearing apparel  
409 suitable for general use.

410 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
411 commission shall make rules:

412 (i) listing the items that constitute "clothing"; and

413 (ii) that are consistent with the list of items that constitute "clothing" under the  
414 agreement.

415 (19) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

416 (20) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other  
417 fuels that does not constitute industrial use under Subsection (46) or residential use under  
418 Subsection (91).

419 (21) (a) "Common carrier" means a person engaged in or transacting the business of  
420 transporting passengers, freight, merchandise, or other property for hire within this state.

421 (b) (i) "Common carrier" does not include a person who, at the time the person is  
422 traveling to or from that person's place of employment, transports a passenger to or from the  
423 passenger's place of employment.

424 (ii) For purposes of Subsection (21)(b)(i), in accordance with Title 63G, Chapter 3,  
425 Utah Administrative Rulemaking Act, the commission may make rules defining what  
426 constitutes a person's place of employment.

427 (22) "Component part" includes:

428 (a) poultry, dairy, and other livestock feed, and their components;

429 (b) baling ties and twine used in the baling of hay and straw;

430 (c) fuel used for providing temperature control of orchards and commercial

431 greenhouses doing a majority of their business in wholesale sales, and for providing power for  
432 off-highway type farm machinery; and

433 (d) feed, seeds, and seedlings.

434 (23) "Computer" means an electronic device that accepts information:

435 (a) (i) in digital form; or

436 (ii) in a form similar to digital form; and

437 (b) manipulates that information for a result based on a sequence of instructions.

438 (24) "Computer software" means a set of coded instructions designed to cause:

439 (a) a computer to perform a task; or

440 (b) automatic data processing equipment to perform a task.

441 (25) (a) "Conference bridging service" means an ancillary service that links two or  
442 more participants of an audio conference call or video conference call.

443 (b) "Conference bridging service" includes providing a telephone number as part of the  
444 ancillary service described in Subsection (25)(a).

445 (c) "Conference bridging service" does not include a telecommunications service used  
446 to reach the ancillary service described in Subsection (25)(a).

447 (26) "Construction materials" means any tangible personal property that will be  
448 converted into real property.

449 (27) "Delivered electronically" means delivered to a purchaser by means other than  
450 tangible storage media.

451 (28) (a) "Delivery charge" means a charge:

452 (i) by a seller of:

453 (A) tangible personal property;

454 (B) a product transferred electronically; or

455 (C) services; and

456 (ii) for preparation and delivery of the tangible personal property, product transferred  
457 electronically, or services described in Subsection (28)(a)(i) to a location designated by the  
458 purchaser.

459 (b) "Delivery charge" includes a charge for the following:

460 (i) transportation;

461 (ii) shipping;

462 (iii) postage;

463 (iv) handling;

464 (v) crating; or

465 (vi) packing.

466 (29) "Detailed telecommunications billing service" means an ancillary service of  
467 separately stating information pertaining to individual calls on a customer's billing statement.

468 (30) "Dietary supplement" means a product, other than tobacco, that:

469 (a) is intended to supplement the diet;

470 (b) contains one or more of the following dietary ingredients:

471 (i) a vitamin;

472 (ii) a mineral;

473 (iii) an herb or other botanical;

474 (iv) an amino acid;

475 (v) a dietary substance for use by humans to supplement the diet by increasing the total  
476 dietary intake; or

477 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient  
478 described in Subsections (30)(b)(i) through (v);

479 (c) (i) except as provided in Subsection (30)(c)(ii), is intended for ingestion in:

480 (A) tablet form;

481 (B) capsule form;

482 (C) powder form;

483 (D) softgel form;

484 (E) gelcap form; or

485 (F) liquid form; or

486 (ii) notwithstanding Subsection (30)(c)(i), if the product is not intended for ingestion in  
487 a form described in Subsections (30)(c)(i)(A) through (F), is not represented:

488 (A) as conventional food; and

489 (B) for use as a sole item of:

490 (I) a meal; or

491 (II) the diet; and

492 (d) is required to be labeled as a dietary supplement:

- 493 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 494 (ii) as required by 21 C.F.R. Sec. 101.36.
- 495 (31) (a) "Direct mail" means printed material delivered or distributed by United States
- 496 mail or other delivery service:
- 497 (i) to:
- 498 (A) a mass audience; or
- 499 (B) addressees on a mailing list provided:
- 500 (I) by a purchaser of the mailing list; or
- 501 (II) at the discretion of the purchaser of the mailing list; and
- 502 (ii) if the cost of the printed material is not billed directly to the recipients.
- 503 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 504 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 505 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 506 single address.
- 507 (32) "Directory assistance" means an ancillary service of providing:
- 508 (a) address information; or
- 509 (b) telephone number information.
- 510 (33) (a) "Disposable home medical equipment or supplies" means medical equipment
- 511 or supplies that:
- 512 (i) cannot withstand repeated use; and
- 513 (ii) are purchased by, for, or on behalf of a person other than:
- 514 (A) a health care facility as defined in Section 26-21-2;
- 515 (B) a health care provider as defined in Section 78B-3-403;
- 516 (C) an office of a health care provider described in Subsection (33)(a)(ii)(B); or
- 517 (D) a person similar to a person described in Subsections (33)(a)(ii)(A) through (C).
- 518 (b) "Disposable home medical equipment or supplies" does not include:
- 519 (i) a drug;
- 520 (ii) durable medical equipment;
- 521 (iii) a hearing aid;
- 522 (iv) a hearing aid accessory;
- 523 (v) mobility enhancing equipment; or

- 524 (vi) tangible personal property used to correct impaired vision, including:
- 525 (A) eyeglasses; or
- 526 (B) contact lenses.
- 527 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 528 commission may by rule define what constitutes medical equipment or supplies.
- 529 (34) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 530 compound, substance, or preparation that is:
- 531 (i) recognized in:
- 532 (A) the official United States Pharmacopoeia;
- 533 (B) the official Homeopathic Pharmacopoeia of the United States;
- 534 (C) the official National Formulary; or
- 535 (D) a supplement to a publication listed in Subsections (34)(a)(i)(A) through (C);
- 536 (ii) intended for use in the:
- 537 (A) diagnosis of disease;
- 538 (B) cure of disease;
- 539 (C) mitigation of disease;
- 540 (D) treatment of disease; or
- 541 (E) prevention of disease; or
- 542 (iii) intended to affect:
- 543 (A) the structure of the body; or
- 544 (B) any function of the body.
- 545 (b) "Drug" does not include:
- 546 (i) food and food ingredients;
- 547 (ii) a dietary supplement;
- 548 (iii) an alcoholic beverage; or
- 549 (iv) a prosthetic device.
- 550 (35) (a) Except as provided in Subsection (35)(c), "durable medical equipment" means
- 551 equipment that:
- 552 (i) can withstand repeated use;
- 553 (ii) is primarily and customarily used to serve a medical purpose;
- 554 (iii) generally is not useful to a person in the absence of illness or injury; and

- 555 (iv) is not worn in or on the body.
- 556 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 557 equipment described in Subsection (35)(a).
- 558 (c) Notwithstanding Subsection (35)(a), "durable medical equipment" does not include
- 559 mobility enhancing equipment.
- 560 (36) "Electronic" means:
- 561 (a) relating to technology; and
- 562 (b) having:
- 563 (i) electrical capabilities;
- 564 (ii) digital capabilities;
- 565 (iii) magnetic capabilities;
- 566 (iv) wireless capabilities;
- 567 (v) optical capabilities;
- 568 (vi) electromagnetic capabilities; or
- 569 (vii) capabilities similar to Subsections (36)(b)(i) through (vi).
- 570 (37) "Employee" is as defined in Section 59-10-401.
- 571 (38) "Fixed guideway" means a public transit facility that uses and occupies:
- 572 (a) rail for the use of public transit; or
- 573 (b) a separate right-of-way for the use of public transit.
- 574 (39) "Fixed wireless service" means a telecommunications service that provides radio
- 575 communication between fixed points.
- 576 (40) (a) "Food and food ingredients" means substances:
- 577 (i) regardless of whether the substances are in:
- 578 (A) liquid form;
- 579 (B) concentrated form;
- 580 (C) solid form;
- 581 (D) frozen form;
- 582 (E) dried form; or
- 583 (F) dehydrated form; and
- 584 (ii) that are:
- 585 (A) sold for:

- 586 (I) ingestion by humans; or
- 587 (II) chewing by humans; and
- 588 (B) consumed for the substance's:
- 589 (I) taste; or
- 590 (II) nutritional value.
- 591 (b) "Food and food ingredients" includes an item described in Subsection (75)(b)(iii).
- 592 (c) "Food and food ingredients" does not include:
- 593 (i) an alcoholic beverage;
- 594 (ii) tobacco; or
- 595 (iii) prepared food.
- 596 (41) (a) "Fundraising sales" means sales:
- 597 (i) (A) made by a school; or
- 598 (B) made by a school student;
- 599 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 600 materials, or provide transportation; and
- 601 (iii) that are part of an officially sanctioned school activity.
- 602 (b) For purposes of Subsection (41)(a)(iii), "officially sanctioned school activity"
- 603 means a school activity:
- 604 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 605 district governing the authorization and supervision of fundraising activities;
- 606 (ii) that does not directly or indirectly compensate an individual teacher or other
- 607 educational personnel by direct payment, commissions, or payment in kind; and
- 608 (iii) the net or gross revenues from which are deposited in a dedicated account
- 609 controlled by the school or school district.
- 610 (42) "Geothermal energy" means energy contained in heat that continuously flows
- 611 outward from the earth that is used as the sole source of energy to produce electricity.
- 612 (43) "Governing board of the agreement" means the governing board of the agreement
- 613 that is:
- 614 (a) authorized to administer the agreement; and
- 615 (b) established in accordance with the agreement.
- 616 (44) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

617 (i) the executive branch of the state, including all departments, institutions, boards,  
618 divisions, bureaus, offices, commissions, and committees;

619 (ii) the judicial branch of the state, including the courts, the Judicial Council, the  
620 Office of the Court Administrator, and similar administrative units in the judicial branch;

621 (iii) the legislative branch of the state, including the House of Representatives, the  
622 Senate, the Legislative Printing Office, the Office of Legislative Research and General  
623 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal  
624 Analyst;

625 (iv) the National Guard;

626 (v) an independent entity as defined in Section 63E-1-102; or

627 (vi) a political subdivision as defined in Section 17B-1-102.

628 (b) "Governmental entity" does not include the state systems of public and higher  
629 education, including:

630 (i) a college campus of the Utah College of Applied Technology;

631 (ii) a school;

632 (iii) the State Board of Education;

633 (iv) the State Board of Regents; or

634 (v) a state institution of higher education as defined in Section 53B-3-102.

635 (45) "Hydroelectric energy" means water used as the sole source of energy to produce  
636 electricity.

637 (46) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or  
638 other fuels:

639 (a) in mining or extraction of minerals;

640 (b) in agricultural operations to produce an agricultural product up to the time of  
641 harvest or placing the agricultural product into a storage facility, including:

642 (i) commercial greenhouses;

643 (ii) irrigation pumps;

644 (iii) farm machinery;

645 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not  
646 registered under Title 41, Chapter 1a, Part 2, Registration; and

647 (v) other farming activities;

648 (c) in manufacturing tangible personal property at an establishment described in SIC  
649 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal  
650 Executive Office of the President, Office of Management and Budget;

651 (d) by a scrap recycler if:

652 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process  
653 one or more of the following items into prepared grades of processed materials for use in new  
654 products:

655 (A) iron;

656 (B) steel;

657 (C) nonferrous metal;

658 (D) paper;

659 (E) glass;

660 (F) plastic;

661 (G) textile; or

662 (H) rubber; and

663 (ii) the new products under Subsection (46)(d)(i) would otherwise be made with  
664 nonrecycled materials; or

665 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a  
666 cogeneration facility as defined in Section 54-2-1.

667 (47) (a) Except as provided in Subsection (47)(b), "installation charge" means a charge  
668 for installing:

669 (i) tangible personal property; or

670 (ii) a product transferred electronically.

671 (b) "Installation charge" does not include a charge for repairs or renovations of:

672 (i) tangible personal property; or

673 (ii) a product transferred electronically.

674 (48) (a) "Lease" or "rental" means a transfer of possession or control of tangible  
675 personal property or a product transferred electronically for:

676 (i) (A) a fixed term; or

677 (B) an indeterminate term; and

678 (ii) consideration.

679 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the  
680 amount of consideration may be increased or decreased by reference to the amount realized  
681 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue  
682 Code.

683 (c) "Lease" or "rental" does not include:

684 (i) a transfer of possession or control of property under a security agreement or  
685 deferred payment plan that requires the transfer of title upon completion of the required  
686 payments;

687 (ii) a transfer of possession or control of property under an agreement that requires the  
688 transfer of title:

689 (A) upon completion of required payments; and

690 (B) if the payment of an option price does not exceed the greater of:

691 (I) \$100; or

692 (II) 1% of the total required payments; or

693 (iii) providing tangible personal property along with an operator for a fixed period of  
694 time or an indeterminate period of time if the operator is necessary for equipment to perform as  
695 designed.

696 (d) For purposes of Subsection (48)(c)(iii), an operator is necessary for equipment to  
697 perform as designed if the operator's duties exceed the:

698 (i) set-up of tangible personal property;

699 (ii) maintenance of tangible personal property; or

700 (iii) inspection of tangible personal property.

701 (49) "Load and leave" means delivery to a purchaser by use of a tangible storage media  
702 if the tangible storage media is not physically transferred to the purchaser.

703 (50) "Local taxing jurisdiction" means a:

704 (a) county that is authorized to impose an agreement sales and use tax;

705 (b) city that is authorized to impose an agreement sales and use tax; or

706 (c) town that is authorized to impose an agreement sales and use tax.

707 (51) "Manufactured home" is as defined in Section 58-56-3.

708 (52) For purposes of Section 59-12-104, "manufacturing facility" means:

709 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard

710 Industrial Classification Manual of the federal Executive Office of the President, Office of  
711 Management and Budget;

712 (b) a scrap recycler if:

713 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process  
714 one or more of the following items into prepared grades of processed materials for use in new  
715 products:

716 (A) iron;

717 (B) steel;

718 (C) nonferrous metal;

719 (D) paper;

720 (E) glass;

721 (F) plastic;

722 (G) textile; or

723 (H) rubber; and

724 (ii) the new products under Subsection (52)(b)(i) would otherwise be made with  
725 nonrecycled materials; or

726 (c) a cogeneration facility as defined in Section 54-2-1.

727 (53) "Member of the immediate family of the producer" means a person who is related  
728 to a producer described in Subsection 59-12-104(20)(a) as a:

729 (a) child or stepchild, regardless of whether the child or stepchild is:

730 (i) an adopted child or adopted stepchild; or

731 (ii) a foster child or foster stepchild;

732 (b) grandchild or stepgrandchild;

733 (c) grandparent or stepgrandparent;

734 (d) nephew or stepnephew;

735 (e) niece or stepniece;

736 (f) parent or stepparent;

737 (g) sibling or stepsibling;

738 (h) spouse;

739 (i) person who is the spouse of a person described in Subsections (53)(a) through (g);

740 or

741 (j) person similar to a person described in Subsections (53)(a) through (i) as  
742 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
743 Administrative Rulemaking Act.

744 (54) "Mobile home" is as defined in Section 58-56-3.

745 (55) "Mobile telecommunications service" is as defined in the Mobile  
746 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

747 (56) (a) "Mobile wireless service" means a telecommunications service, regardless of  
748 the technology used, if:

- 749 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 750 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 751 (iii) the origination point described in Subsection (56)(a)(i) and the termination point  
752 described in Subsection (56)(a)(ii) are not fixed.

753 (b) "Mobile wireless service" includes a telecommunications service that is provided  
754 by a commercial mobile radio service provider.

755 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
756 commission may by rule define "commercial mobile radio service provider."

757 (57) (a) Except as provided in Subsection (57)(c), "mobility enhancing equipment"  
758 means equipment that is:

759 (i) primarily and customarily used to provide or increase the ability to move from one  
760 place to another;

761 (ii) appropriate for use in a:

762 (A) home; or

763 (B) motor vehicle; and

764 (iii) not generally used by persons with normal mobility.

765 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
766 the equipment described in Subsection (57)(a).

767 (c) Notwithstanding Subsection (57)(a), "mobility enhancing equipment" does not  
768 include:

769 (i) a motor vehicle;

770 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor  
771 vehicle manufacturer;

772 (iii) durable medical equipment; or  
773 (iv) a prosthetic device.

774 (58) "Model 1 seller" means a seller registered under the agreement that has selected a  
775 certified service provider as the seller's agent to perform all of the seller's sales and use tax  
776 functions for agreement sales and use taxes other than the seller's obligation under Section  
777 59-12-124 to remit a tax on the seller's own purchases.

778 (59) "Model 2 seller" means a seller registered under the agreement that:

779 (a) except as provided in Subsection (59)(b), has selected a certified automated system  
780 to perform the seller's sales tax functions for agreement sales and use taxes; and

781 (b) notwithstanding Subsection (59)(a), retains responsibility for remitting all of the  
782 sales tax:

783 (i) collected by the seller; and

784 (ii) to the appropriate local taxing jurisdiction.

785 (60) (a) Subject to Subsection (60)(b), "model 3 seller" means a seller registered under  
786 the agreement that has:

787 (i) sales in at least five states that are members of the agreement;

788 (ii) total annual sales revenues of at least \$500,000,000;

789 (iii) a proprietary system that calculates the amount of tax:

790 (A) for an agreement sales and use tax; and

791 (B) due to each local taxing jurisdiction; and

792 (iv) entered into a performance agreement with the governing board of the agreement.

793 (b) For purposes of Subsection (60)(a), "model 3 seller" includes an affiliated group of  
794 sellers using the same proprietary system.

795 (61) "Model 4 seller" means a seller that is registered under the agreement and is not a  
796 model 1 seller, model 2 seller, or model 3 seller.

797 [~~(61)~~] (62) "Modular home" means a modular unit as defined in Section 58-56-3.

798 [~~(62)~~] (63) "Motor vehicle" is as defined in Section 41-1a-102.

799 [~~(63)~~] (64) "Oil shale" means a group of fine black to dark brown shales containing  
800 bituminous material that yields petroleum upon distillation.

801 [~~(64)~~] (65) (a) "Other fuels" means products that burn independently to produce heat or  
802 energy.

803 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible  
804 personal property.

805 ~~[(65)]~~ (66) (a) "Paging service" means a telecommunications service that provides  
806 transmission of a coded radio signal for the purpose of activating a specific pager.

807 (b) For purposes of Subsection ~~[(65)]~~ (66)(a), the transmission of a coded radio signal  
808 includes a transmission by message or sound.

809 ~~[(66)]~~ (67) "Pawnbroker" is as defined in Section 13-32a-102.

810 ~~[(67)]~~ (68) "Pawn transaction" is as defined in Section 13-32a-102.

811 ~~[(68)]~~ (69) (a) "Permanently attached to real property" means that for tangible personal  
812 property attached to real property:

813 (i) the attachment of the tangible personal property to the real property:

814 (A) is essential to the use of the tangible personal property; and

815 (B) suggests that the tangible personal property will remain attached to the real  
816 property in the same place over the useful life of the tangible personal property; or

817 (ii) if the tangible personal property is detached from the real property, the detachment  
818 would:

819 (A) cause substantial damage to the tangible personal property; or

820 (B) require substantial alteration or repair of the real property to which the tangible  
821 personal property is attached.

822 (b) "Permanently attached to real property" includes:

823 (i) the attachment of an accessory to the tangible personal property if the accessory is:

824 (A) essential to the operation of the tangible personal property; and

825 (B) attached only to facilitate the operation of the tangible personal property;

826 (ii) a temporary detachment of tangible personal property from real property for a  
827 repair or renovation if the repair or renovation is performed where the tangible personal  
828 property and real property are located; or

829 (iii) property attached to oil, gas, or water pipelines, except for the property listed in  
830 Subsection ~~[(68)]~~ (69)(c)(iii) or (iv).

831 (c) "Permanently attached to real property" does not include:

832 (i) the attachment of portable or movable tangible personal property to real property if  
833 that portable or movable tangible personal property is attached to real property only for:

834 (A) convenience;

835 (B) stability; or

836 (C) for an obvious temporary purpose;

837 (ii) the detachment of tangible personal property from real property except for the

838 detachment described in Subsection [~~68~~] (69)(b)(ii);

839 (iii) an attachment of the following tangible personal property to real property if the

840 attachment to real property is only through a line that supplies water, electricity, gas,

841 telecommunications, cable, or supplies a similar item as determined by the commission by rule

842 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

843 (A) a computer;

844 (B) a telephone;

845 (C) a television; or

846 (D) tangible personal property similar to Subsections [~~68~~] (69)(c)(iii)(A) through (C)

847 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

848 Administrative Rulemaking Act; or

849 (iv) an item listed in Subsection [~~108~~] (109)(c).

850 [~~69~~] (70) "Person" includes any individual, firm, partnership, joint venture,

851 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,

852 city, municipality, district, or other local governmental entity of the state, or any group or

853 combination acting as a unit.

854 [~~70~~] (71) "Place of primary use":

855 (a) for telecommunications service other than mobile telecommunications service,

856 means the street address representative of where the customer's use of the telecommunications

857 service primarily occurs, which shall be:

858 (i) the residential street address of the customer; or

859 (ii) the primary business street address of the customer; or

860 (b) for mobile telecommunications service, is as defined in the Mobile

861 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

862 [~~71~~] (72) (a) "Postpaid calling service" means a telecommunications service a person

863 obtains by making a payment on a call-by-call basis:

864 (i) through the use of a:

865 (A) bank card;  
866 (B) credit card;  
867 (C) debit card; or  
868 (D) travel card; or  
869 (ii) by a charge made to a telephone number that is not associated with the origination  
870 or termination of the telecommunications service.

871 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling  
872 service, that would be a prepaid wireless calling service if the service were exclusively a  
873 telecommunications service.

874 [~~(72)~~] (73) "Postproduction" means an activity related to the finishing or duplication of  
875 a medium described in Subsection 59-12-104(54)(a).

876 [~~(73)~~] (74) "Prepaid calling service" means a telecommunications service:

877 (a) that allows a purchaser access to telecommunications service that is exclusively  
878 telecommunications service;

879 (b) that:

880 (i) is paid for in advance; and

881 (ii) enables the origination of a call using an:

882 (A) access number; or

883 (B) authorization code;

884 (c) that is dialed:

885 (i) manually; or

886 (ii) electronically; and

887 (d) sold in predetermined units or dollars that decline:

888 (i) by a known amount; and

889 (ii) with use.

890 [~~(74)~~] (75) "Prepaid wireless calling service" means a telecommunications service:

891 (a) that provides the right to utilize:

892 (i) mobile wireless service; and

893 (ii) other service that is not a telecommunications service, including:

894 (A) the download of a product transferred electronically;

895 (B) a content service; or

- 896 (C) an ancillary service;
- 897 (b) that:
- 898 (i) is paid for in advance; and
- 899 (ii) enables the origination of a call using an:
- 900 (A) access number; or
- 901 (B) authorization code;
- 902 (c) that is dialed:
- 903 (i) manually; or
- 904 (ii) electronically; and
- 905 (d) sold in predetermined units or dollars that decline:
- 906 (i) by a known amount; and
- 907 (ii) with use.
- 908 [~~(75)~~] (76) (a) "Prepared food" means:
- 909 (i) food:
- 910 (A) sold in a heated state; or
- 911 (B) heated by a seller;
- 912 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 913 item; or
- 914 (iii) except as provided in Subsection [~~(75)~~] (76)(c), food sold with an eating utensil
- 915 provided by the seller, including a:
- 916 (A) plate;
- 917 (B) knife;
- 918 (C) fork;
- 919 (D) spoon;
- 920 (E) glass;
- 921 (F) cup;
- 922 (G) napkin; or
- 923 (H) straw.
- 924 (b) "Prepared food" does not include:
- 925 (i) food that a seller only:
- 926 (A) cuts;

- 927 (B) repackages; or
- 928 (C) pasteurizes; or
- 929 (ii) (A) the following:
- 930 (I) raw egg;
- 931 (II) raw fish;
- 932 (III) raw meat;
- 933 (IV) raw poultry; or
- 934 (V) a food containing an item described in Subsections [~~(75)~~] (76)(b)(ii)(A)(I) through
- 935 (IV); and
- 936 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 937 Food and Drug Administration's Food Code that a consumer cook the items described in
- 938 Subsection [~~(75)~~] (76)(b)(ii)(A) to prevent food borne illness; or
- 939 (iii) the following if sold without eating utensils provided by the seller:
- 940 (A) food and food ingredients sold by a seller if the seller's proper primary
- 941 classification under the 2002 North American Industry Classification System of the federal
- 942 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 943 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 944 Manufacturing;
- 945 (B) food and food ingredients sold in an unheated state:
- 946 (I) by weight or volume; and
- 947 (II) as a single item; or
- 948 (C) a bakery item, including:
- 949 (I) a bagel;
- 950 (II) a bar;
- 951 (III) a biscuit;
- 952 (IV) bread;
- 953 (V) a bun;
- 954 (VI) a cake;
- 955 (VII) a cookie;
- 956 (VIII) a croissant;
- 957 (IX) a danish;

- 958 (X) a donut;
- 959 (XI) a muffin;
- 960 (XII) a pastry;
- 961 (XIII) a pie;
- 962 (XIV) a roll;
- 963 (XV) a tart;
- 964 (XVI) a torte; or
- 965 (XVII) a tortilla.

966 (c) Notwithstanding Subsection [~~(75)~~] (76)(a)(iii), an eating utensil provided by the  
967 seller does not include the following used to transport the food:

- 968 (i) a container; or
- 969 (ii) packaging.

970 [~~(76)~~] (77) "Prescription" means an order, formula, or recipe that is issued:

- 971 (a) (i) orally;
- 972 (ii) in writing;
- 973 (iii) electronically; or
- 974 (iv) by any other manner of transmission; and

975 (b) by a licensed practitioner authorized by the laws of a state.

976 [~~(77)~~] (78) (a) Except as provided in Subsection [~~(77)~~] (78)(b)(ii) or (iii), "prewritten  
977 computer software" means computer software that is not designed and developed:

- 978 (i) by the author or other creator of the computer software; and
- 979 (ii) to the specifications of a specific purchaser.

980 (b) "Prewritten computer software" includes:

981 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer  
982 software is not designed and developed:

- 983 (A) by the author or other creator of the computer software; and
- 984 (B) to the specifications of a specific purchaser;

985 (ii) notwithstanding Subsection [~~(77)~~] (78)(a), computer software designed and  
986 developed by the author or other creator of the computer software to the specifications of a  
987 specific purchaser if the computer software is sold to a person other than the purchaser; or

988 (iii) notwithstanding Subsection [~~(77)~~] (78)(a) and except as provided in Subsection

989 [~~(77)~~] (78)(c), prewritten computer software or a prewritten portion of prewritten computer  
990 software:

991 (A) that is modified or enhanced to any degree; and

992 (B) if the modification or enhancement described in Subsection [~~(77)~~] (78)(b)(iii)(A) is  
993 designed and developed to the specifications of a specific purchaser.

994 (c) Notwithstanding Subsection [~~(77)~~] (78)(b)(iii), "prewritten computer software"  
995 does not include a modification or enhancement described in Subsection [~~(77)~~] (78)(b)(iii) if  
996 the charges for the modification or enhancement are:

997 (i) reasonable; and

998 (ii) separately stated on the invoice or other statement of price provided to the  
999 purchaser.

1000 [~~(78)~~] (79) (a) "Private communication service" means a telecommunications service:

1001 (i) that entitles a customer to exclusive or priority use of one or more communications  
1002 channels between or among termination points; and

1003 (ii) regardless of the manner in which the one or more communications channels are  
1004 connected.

1005 (b) "Private communications service" includes the following provided in connection  
1006 with the use of one or more communications channels:

1007 (i) an extension line;

1008 (ii) a station;

1009 (iii) switching capacity; or

1010 (iv) another associated service that is provided in connection with the use of one or  
1011 more communications channels as defined in Section 59-12-215.

1012 [~~(79)~~] (80) (a) "Prosthetic device" means a device that is worn on or in the body to:

1013 (i) artificially replace a missing portion of the body;

1014 (ii) prevent or correct a physical deformity or physical malfunction; or

1015 (iii) support a weak or deformed portion of the body.

1016 (b) "Prosthetic device" includes:

1017 (i) parts used in the repairs or renovation of a prosthetic device;

1018 (ii) replacement parts for a prosthetic device;

1019 (iii) a dental prosthesis; or

- 1020 (iv) a hearing aid.
- 1021 (c) "Prosthetic device" does not include:
- 1022 (i) corrective eyeglasses; or
- 1023 (ii) contact lenses.
- 1024 [~~(80)~~ (81) (a) "Protective equipment" means an item:
- 1025 (i) for human wear; and
- 1026 (ii) that is:
- 1027 (A) designed as protection:
- 1028 (I) to the wearer against injury or disease; or
- 1029 (II) against damage or injury of other persons or property; and
- 1030 (B) not suitable for general use.
- 1031 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1032 commission shall make rules:
- 1033 (i) listing the items that constitute "protective equipment"; and
- 1034 (ii) that are consistent with the list of items that constitute "protective equipment"
- 1035 under the agreement.
- 1036 [~~(81)~~ (82) (a) For purposes of Subsection 59-12-104(41), "publication" means any
- 1037 written or printed matter, other than a photocopy:
- 1038 (i) regardless of:
- 1039 (A) characteristics;
- 1040 (B) copyright;
- 1041 (C) form;
- 1042 (D) format;
- 1043 (E) method of reproduction; or
- 1044 (F) source; and
- 1045 (ii) made available in printed or electronic format.
- 1046 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1047 commission may by rule define the term "photocopy."
- 1048 [~~(82)~~ (83) (a) "Purchase price" and "sales price" mean the total amount of
- 1049 consideration:
- 1050 (i) valued in money; and

- 1051 (ii) for which tangible personal property, a product transferred electronically, or  
1052 services are:
- 1053 (A) sold;
  - 1054 (B) leased; or
  - 1055 (C) rented.
- 1056 (b) "Purchase price" and "sales price" include:
- 1057 (i) the seller's cost of the tangible personal property, a product transferred  
1058 electronically, or services sold;
  - 1059 (ii) expenses of the seller, including:
    - 1060 (A) the cost of materials used;
    - 1061 (B) a labor cost;
    - 1062 (C) a service cost;
    - 1063 (D) interest;
    - 1064 (E) a loss;
    - 1065 (F) the cost of transportation to the seller; or
    - 1066 (G) a tax imposed on the seller;
  - 1067 (iii) a charge by the seller for any service necessary to complete the sale; or
  - 1068 (iv) consideration a seller receives from a person other than the purchaser if:
    - 1069 (A) (I) the seller actually receives consideration from a person other than the purchaser;  
1070 and
    - 1071 (II) the consideration described in Subsection [~~82~~] 83(b)(iv)(A)(I) is directly related  
1072 to a price reduction or discount on the sale;
    - 1073 (B) the seller has an obligation to pass the price reduction or discount through to the  
1074 purchaser;
    - 1075 (C) the amount of the consideration attributable to the sale is fixed and determinable by  
1076 the seller at the time of the sale to the purchaser; and
    - 1077 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the  
1078 seller to claim a price reduction or discount; and
    - 1079 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,  
1080 coupon, or other documentation with the understanding that the person other than the seller  
1081 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

1082 (II) the purchaser identifies that purchaser to the seller as a member of a group or  
1083 organization allowed a price reduction or discount, except that a preferred customer card that is  
1084 available to any patron of a seller does not constitute membership in a group or organization  
1085 allowed a price reduction or discount; or

1086 (III) the price reduction or discount is identified as a third party price reduction or  
1087 discount on the:

1088 (Aa) invoice the purchaser receives; or

1089 (Bb) certificate, coupon, or other documentation the purchaser presents.

1090 (c) "Purchase price" and "sales price" do not include:

1091 (i) a discount:

1092 (A) in a form including:

1093 (I) cash;

1094 (II) term; or

1095 (III) coupon;

1096 (B) that is allowed by a seller;

1097 (C) taken by a purchaser on a sale; and

1098 (D) that is not reimbursed by a third party; or

1099 (ii) the following if separately stated on an invoice, bill of sale, or similar document  
1100 provided to the purchaser:

1101 (A) the following from credit extended on the sale of tangible personal property or  
1102 services:

1103 (I) a carrying charge;

1104 (II) a financing charge; or

1105 (III) an interest charge;

1106 (B) a delivery charge;

1107 (C) an installation charge;

1108 (D) a manufacturer rebate on a motor vehicle; or

1109 (E) a tax or fee legally imposed directly on the consumer.

1110 [~~83~~] (84) "Purchaser" means a person to whom:

1111 (a) a sale of tangible personal property is made;

1112 (b) a product is transferred electronically; or

- 1113 (c) a service is furnished.
- 1114 [~~(84)~~] (85) "Regularly rented" means:
- 1115 (a) rented to a guest for value three or more times during a calendar year; or
- 1116 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1117 value.
- 1118 [~~(85)~~] (86) "Renewable energy" means:
- 1119 (a) biomass energy;
- 1120 (b) hydroelectric energy;
- 1121 (c) geothermal energy;
- 1122 (d) solar energy; or
- 1123 (e) wind energy.
- 1124 [~~(86)~~] (87) (a) "Renewable energy production facility" means a facility that:
- 1125 (i) uses renewable energy to produce electricity; and
- 1126 (ii) has a production capacity of 20 kilowatts or greater.
- 1127 (b) A facility is a renewable energy production facility regardless of whether the
- 1128 facility is:
- 1129 (i) connected to an electric grid; or
- 1130 (ii) located on the premises of an electricity consumer.
- 1131 [~~(87)~~] (88) "Rental" is as defined in Subsection (48).
- 1132 [~~(88)~~] (89) "Repairs or renovations of tangible personal property" means:
- 1133 (a) a repair or renovation of tangible personal property that is not permanently attached
- 1134 to real property; or
- 1135 (b) attaching tangible personal property or a product that is transferred electronically to
- 1136 other tangible personal property if the other tangible personal property to which the tangible
- 1137 personal property or product that is transferred electronically is attached is not permanently
- 1138 attached to real property.
- 1139 [~~(89)~~] (90) "Research and development" means the process of inquiry or
- 1140 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
- 1141 process of preparing those devices, technologies, or applications for marketing.
- 1142 [~~(90)~~] (91) (a) "Residential telecommunications services" means a telecommunications
- 1143 service or an ancillary service that is provided to an individual for personal use:

- 1144 (i) at a residential address; or
- 1145 (ii) at an institution, including a nursing home or a school, if the telecommunications
- 1146 service or ancillary service is provided to and paid for by the individual residing at the
- 1147 institution rather than the institution.
- 1148 (b) For purposes of Subsection [~~90~~] (91)(a), a residential address includes an:
- 1149 (i) apartment; or
- 1150 (ii) other individual dwelling unit.
- 1151 [~~91~~] (92) "Residential use" means the use in or around a home, apartment building,
- 1152 sleeping quarters, and similar facilities or accommodations.
- 1153 [~~92~~] (93) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
- 1154 other than:
- 1155 (a) resale;
- 1156 (b) sublease; or
- 1157 (c) subrent.
- 1158 [~~93~~] (94) (a) "Retailer" means any person engaged in a regularly organized business
- 1159 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
- 1160 and who is selling to the user or consumer and not for resale.
- 1161 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
- 1162 engaged in the business of selling to users or consumers within the state.
- 1163 [~~94~~] (95) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
- 1164 otherwise, in any manner, of tangible personal property or any other taxable transaction under
- 1165 Subsection 59-12-103(1), for consideration.
- 1166 (b) "Sale" includes:
- 1167 (i) installment and credit sales;
- 1168 (ii) any closed transaction constituting a sale;
- 1169 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
- 1170 chapter;
- 1171 (iv) any transaction if the possession of property is transferred but the seller retains the
- 1172 title as security for the payment of the price; and
- 1173 (v) any transaction under which right to possession, operation, or use of any article of
- 1174 tangible personal property is granted under a lease or contract and the transfer of possession

1175 would be taxable if an outright sale were made.

1176 ~~[(95)]~~ (96) "Sale at retail" is as defined in Subsection ~~[(92)]~~ (93).

1177 ~~[(96)]~~ (97) "Sale-leaseback transaction" means a transaction by which title to tangible  
1178 personal property or a product transferred electronically that is subject to a tax under this  
1179 chapter is transferred:

1180 (a) by a purchaser-lessee;

1181 (b) to a lessor;

1182 (c) for consideration; and

1183 (d) if:

1184 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase  
1185 of the tangible personal property or product transferred electronically;

1186 (ii) the sale of the tangible personal property or product transferred electronically to the  
1187 lessor is intended as a form of financing:

1188 (A) for the tangible personal property or product transferred electronically; and

1189 (B) to the purchaser-lessee; and

1190 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee  
1191 is required to:

1192 (A) capitalize the tangible personal property or product transferred electronically for  
1193 financial reporting purposes; and

1194 (B) account for the lease payments as payments made under a financing arrangement.

1195 ~~[(97)]~~ (98) "Sales price" is as defined in Subsection ~~[(82)]~~ (83).

1196 ~~[(98)]~~ (99) (a) "Sales relating to schools" means the following sales by, amounts paid  
1197 to, or amounts charged by a school:

1198 (i) sales that are directly related to the school's educational functions or activities

1199 including:

1200 (A) the sale of:

1201 (I) textbooks;

1202 (II) textbook fees;

1203 (III) laboratory fees;

1204 (IV) laboratory supplies; or

1205 (V) safety equipment;

1206 (B) the sale of a uniform, protective equipment, or sports or recreational equipment  
1207 that:  
1208 (I) a student is specifically required to wear as a condition of participation in a  
1209 school-related event or school-related activity; and  
1210 (II) is not readily adaptable to general or continued usage to the extent that it takes the  
1211 place of ordinary clothing;  
1212 (C) sales of the following if the net or gross revenues generated by the sales are  
1213 deposited into a school district fund or school fund dedicated to school meals:  
1214 (I) food and food ingredients; or  
1215 (II) prepared food; or  
1216 (D) transportation charges for official school activities; or  
1217 (ii) amounts paid to or amounts charged by a school for admission to a school-related  
1218 event or school-related activity.  
1219 (b) "Sales relating to schools" does not include:  
1220 (i) bookstore sales of items that are not educational materials or supplies;  
1221 (ii) except as provided in Subsection [~~98~~] 99(a)(i)(B):  
1222 (A) clothing;  
1223 (B) clothing accessories or equipment;  
1224 (C) protective equipment; or  
1225 (D) sports or recreational equipment; or  
1226 (iii) amounts paid to or amounts charged by a school for admission to a school-related  
1227 event or school-related activity if the amounts paid or charged are passed through to a person:  
1228 (A) other than a:  
1229 (I) school;  
1230 (II) nonprofit organization authorized by a school board or a governing body of a  
1231 private school to organize and direct a competitive secondary school activity; or  
1232 (III) nonprofit association authorized by a school board or a governing body of a  
1233 private school to organize and direct a competitive secondary school activity; and  
1234 (B) that is required to collect sales and use taxes under this chapter.  
1235 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1236 commission may make rules defining the term "passed through."

- 1237            [~~(99)~~] (100) For purposes of this section and Section 59-12-104, "school":
- 1238            (a) means:
- 1239            (i) an elementary school or a secondary school that:
- 1240            (A) is a:
- 1241            (I) public school; or
- 1242            (II) private school; and
- 1243            (B) provides instruction for one or more grades kindergarten through 12; or
- 1244            (ii) a public school district; and
- 1245            (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1246            [~~(100)~~] (101) "Seller" means a person that makes a sale, lease, or rental of:
- 1247            (a) tangible personal property;
- 1248            (b) a product transferred electronically; or
- 1249            (c) a service.
- 1250            [~~(101)~~] (102) (a) "Semiconductor fabricating, processing, research, or development
- 1251 materials" means tangible personal property or a product transferred electronically if the
- 1252 tangible personal property or product transferred electronically is:
- 1253            (i) used primarily in the process of:
- 1254            (A) (I) manufacturing a semiconductor;
- 1255            (II) fabricating a semiconductor; or
- 1256            (III) research or development of a:
- 1257            (Aa) semiconductor; or
- 1258            (Bb) semiconductor manufacturing process; or
- 1259            (B) maintaining an environment suitable for a semiconductor; or
- 1260            (ii) consumed primarily in the process of:
- 1261            (A) (I) manufacturing a semiconductor;
- 1262            (II) fabricating a semiconductor; or
- 1263            (III) research or development of a:
- 1264            (Aa) semiconductor; or
- 1265            (Bb) semiconductor manufacturing process; or
- 1266            (B) maintaining an environment suitable for a semiconductor.
- 1267            (b) "Semiconductor fabricating, processing, research, or development materials"

1268 includes:

1269 (i) parts used in the repairs or renovations of tangible personal property or a product  
1270 transferred electronically described in Subsection [~~(101)~~] (102)(a); or

1271 (ii) a chemical, catalyst, or other material used to:

1272 (A) produce or induce in a semiconductor a:

1273 (I) chemical change; or

1274 (II) physical change;

1275 (B) remove impurities from a semiconductor; or

1276 (C) improve the marketable condition of a semiconductor.

1277 [~~(102)~~] (103) "Senior citizen center" means a facility having the primary purpose of  
1278 providing services to the aged as defined in Section 62A-3-101.

1279 [~~(103)~~] (104) "Simplified electronic return" means the electronic return:

1280 (a) described in Section 318(C) of the agreement; and

1281 (b) approved by the governing board of the agreement.

1282 [~~(104)~~] (105) "Solar energy" means the sun used as the sole source of energy for  
1283 producing electricity.

1284 [~~(105)~~] (106) (a) "Sports or recreational equipment" means an item:

1285 (i) designed for human use; and

1286 (ii) that is:

1287 (A) worn in conjunction with:

1288 (I) an athletic activity; or

1289 (II) a recreational activity; and

1290 (B) not suitable for general use.

1291 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1292 commission shall make rules:

1293 (i) listing the items that constitute "sports or recreational equipment"; and

1294 (ii) that are consistent with the list of items that constitute "sports or recreational  
1295 equipment" under the agreement.

1296 [~~(106)~~] (107) "State" means the state of Utah, its departments, and agencies.

1297 [~~(107)~~] (108) "Storage" means any keeping or retention of tangible personal property or  
1298 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose

1299 except sale in the regular course of business.

1300           ~~[(108)]~~ (109) (a) Except as provided in Subsection ~~[(108)]~~ (109) (d) or (e), "tangible  
1301 personal property" means personal property that:

1302           (i) may be:

1303           (A) seen;

1304           (B) weighed;

1305           (C) measured;

1306           (D) felt; or

1307           (E) touched; or

1308           (ii) is in any manner perceptible to the senses.

1309           (b) "Tangible personal property" includes:

1310           (i) electricity;

1311           (ii) water;

1312           (iii) gas;

1313           (iv) steam; or

1314           (v) prewritten computer software.

1315           (c) "Tangible personal property" includes the following regardless of whether the item  
1316 is attached to real property:

1317           (i) a dishwasher;

1318           (ii) a dryer;

1319           (iii) a freezer;

1320           (iv) a microwave;

1321           (v) a refrigerator;

1322           (vi) a stove;

1323           (vii) a washer; or

1324           (viii) an item similar to Subsections ~~[(108)]~~ (109)(c)(i) through (vii) as determined by  
1325 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1326 Rulemaking Act.

1327           (d) "Tangible personal property" does not include a product that is transferred  
1328 electronically.

1329           (e) "Tangible personal property" does not include the following if attached to real

1330 property, regardless of whether the attachment to real property is only through a line that  
1331 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the  
1332 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1333 Rulemaking Act:

- 1334 (i) a hot water heater;
- 1335 (ii) a water filtration system; or
- 1336 (iii) a water softener system.

1337 ~~[(109)]~~ (110) "Tar sands" means impregnated sands that yield mixtures of liquid  
1338 hydrocarbon and require further processing other than mechanical blending before becoming  
1339 finished petroleum products.

1340 ~~[(110)]~~ (111) (a) "Telecommunications enabling or facilitating equipment, machinery,  
1341 or software" means an item listed in Subsection ~~[(110)]~~ (111)(b) if that item is purchased or  
1342 leased primarily to enable or facilitate one or more of the following to function:

- 1343 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1344 (ii) telecommunications transmission equipment, machinery, or software.

1345 (b) The following apply to Subsection ~~[(110)]~~ (111)(a):

- 1346 (i) a pole;
- 1347 (ii) software;
- 1348 (iii) a supplementary power supply;
- 1349 (iv) temperature or environmental equipment or machinery;
- 1350 (v) test equipment;
- 1351 (vi) a tower; or

1352 (vii) equipment, machinery, or software that functions similarly to an item listed in  
1353 Subsections ~~[(110)]~~ (111)(b)(i) through (vi) as determined by the commission by rule made in  
1354 accordance with Subsection ~~[(110)]~~ (111)(c).

1355 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1356 commission may by rule define what constitutes equipment, machinery, or software that  
1357 functions similarly to an item listed in Subsections ~~[(110)]~~ (111)(b)(i) through (vi).

1358 ~~[(111)]~~ (112) "Telecommunications equipment, machinery, or software required for  
1359 911 service" means equipment, machinery, or software that is required to comply with 47  
1360 C.F.R. Sec. 20.18.

1361            [~~(H2)~~] (113) "Telecommunications maintenance or repair equipment, machinery, or  
1362 software" means equipment, machinery, or software purchased or leased primarily to maintain  
1363 or repair one or more of the following, regardless of whether the equipment, machinery, or  
1364 software is purchased or leased as a spare part or as an upgrade or modification to one or more  
1365 of the following:

- 1366            (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1367            (b) telecommunications switching or routing equipment, machinery, or software; or
- 1368            (c) telecommunications transmission equipment, machinery, or software.

1369            [~~(H3)~~] (114) (a) "Telecommunications service" means the electronic conveyance,  
1370 routing, or transmission of audio, data, video, voice, or any other information or signal to a  
1371 point, or among or between points.

1372            (b) "Telecommunications service" includes:

1373            (i) an electronic conveyance, routing, or transmission with respect to which a computer  
1374 processing application is used to act:

1375            (A) on the code, form, or protocol of the content;

1376            (B) for the purpose of electronic conveyance, routing, or transmission; and

1377            (C) regardless of whether the service:

1378            (I) is referred to as voice over Internet protocol service; or

1379            (II) is classified by the Federal Communications Commission as enhanced or value  
1380 added;

1381            (ii) an 800 service;

1382            (iii) a 900 service;

1383            (iv) a fixed wireless service;

1384            (v) a mobile wireless service;

1385            (vi) a postpaid calling service;

1386            (vii) a prepaid calling service;

1387            (viii) a prepaid wireless calling service; or

1388            (ix) a private communications service.

1389            (c) "Telecommunications service" does not include:

1390            (i) advertising, including directory advertising;

1391            (ii) an ancillary service;

- 1392 (iii) a billing and collection service provided to a third party;
- 1393 (iv) a data processing and information service if:
- 1394 (A) the data processing and information service allows data to be:
- 1395 (I) (Aa) acquired;
- 1396 (Bb) generated;
- 1397 (Cc) processed;
- 1398 (Dd) retrieved; or
- 1399 (Ee) stored; and
- 1400 (II) delivered by an electronic transmission to a purchaser; and
- 1401 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1402 or information;
- 1403 (v) installation or maintenance of the following on a customer's premises:
- 1404 (A) equipment; or
- 1405 (B) wiring;
- 1406 (vi) Internet access service;
- 1407 (vii) a paging service;
- 1408 (viii) a product transferred electronically, including:
- 1409 (A) music;
- 1410 (B) reading material;
- 1411 (C) a ring tone;
- 1412 (D) software; or
- 1413 (E) video;
- 1414 (ix) a radio and television audio and video programming service:
- 1415 (A) regardless of the medium; and
- 1416 (B) including:
- 1417 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1418 programming service by a programming service provider;
- 1419 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1420 (III) audio and video programming services delivered by a commercial mobile radio
- 1421 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1422 (x) a value-added nonvoice data service; or

- 1423 (xi) tangible personal property.
- 1424 [~~(114)~~] (115) (a) "Telecommunications service provider" means a person that:
- 1425 (i) owns, controls, operates, or manages a telecommunications service; and
- 1426 (ii) engages in an activity described in Subsection [~~(114)~~] (115)(a)(i) for the shared use
- 1427 with or resale to any person of the telecommunications service.
- 1428 (b) A person described in Subsection [~~(114)~~] (115)(a) is a telecommunications service
- 1429 provider whether or not the Public Service Commission of Utah regulates:
- 1430 (i) that person; or
- 1431 (ii) the telecommunications service that the person owns, controls, operates, or
- 1432 manages.
- 1433 [~~(115)~~] (116) (a) "Telecommunications switching or routing equipment, machinery, or
- 1434 software" means an item listed in Subsection [~~(115)~~] (116)(b) if that item is purchased or
- 1435 leased primarily for switching or routing:
- 1436 (i) an ancillary service;
- 1437 (ii) data communications;
- 1438 (iii) voice communications; or
- 1439 (iv) telecommunications service.
- 1440 (b) The following apply to Subsection [~~(115)~~] (116)(a):
- 1441 (i) a bridge;
- 1442 (ii) a computer;
- 1443 (iii) a cross connect;
- 1444 (iv) a modem;
- 1445 (v) a multiplexer;
- 1446 (vi) plug in circuitry;
- 1447 (vii) a router;
- 1448 (viii) software;
- 1449 (ix) a switch; or
- 1450 (x) equipment, machinery, or software that functions similarly to an item listed in
- 1451 Subsections [~~(115)~~] (116)(b)(i) through (ix) as determined by the commission by rule made in
- 1452 accordance with Subsection [~~(115)~~] (116)(c).
- 1453 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1454 commission may by rule define what constitutes equipment, machinery, or software that  
1455 functions similarly to an item listed in Subsections [~~(115)~~] (116)(b)(i) through (ix).

1456 [~~(116)~~] (117) (a) "Telecommunications transmission equipment, machinery, or  
1457 software" means an item listed in Subsection [~~(116)~~] (117)(b) if that item is purchased or  
1458 leased primarily for sending, receiving, or transporting:

- 1459 (i) an ancillary service;
  - 1460 (ii) data communications;
  - 1461 (iii) voice communications; or
  - 1462 (iv) telecommunications service.
- 1463 (b) The following apply to Subsection [~~(116)~~] (117)(a):
- 1464 (i) an amplifier;
  - 1465 (ii) a cable;
  - 1466 (iii) a closure;
  - 1467 (iv) a conduit;
  - 1468 (v) a controller;
  - 1469 (vi) a duplexer;
  - 1470 (vii) a filter;
  - 1471 (viii) an input device;
  - 1472 (ix) an input/output device;
  - 1473 (x) an insulator;
  - 1474 (xi) microwave machinery or equipment;
  - 1475 (xii) an oscillator;
  - 1476 (xiii) an output device;
  - 1477 (xiv) a pedestal;
  - 1478 (xv) a power converter;
  - 1479 (xvi) a power supply;
  - 1480 (xvii) a radio channel;
  - 1481 (xviii) a radio receiver;
  - 1482 (xix) a radio transmitter;
  - 1483 (xx) a repeater;
  - 1484 (xxi) software;

1485 (xxii) a terminal;  
1486 (xxiii) a timing unit;  
1487 (xxiv) a transformer;  
1488 (xxv) a wire; or  
1489 (xxvi) equipment, machinery, or software that functions similarly to an item listed in  
1490 Subsections [~~(H6)~~] (117)(b)(i) through (xxv) as determined by the commission by rule made in  
1491 accordance with Subsection [~~(H6)~~] (117)(c).

1492 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1493 commission may by rule define what constitutes equipment, machinery, or software that  
1494 functions similarly to an item listed in Subsections [~~(H6)~~] (117)(b)(i) through (xxv).

1495 [~~(H7)~~] (118) "Tobacco" means:

- 1496 (a) a cigarette;
- 1497 (b) a cigar;
- 1498 (c) chewing tobacco;
- 1499 (d) pipe tobacco; or
- 1500 (e) any other item that contains tobacco.

1501 [~~(H8)~~] (119) "Unassisted amusement device" means an amusement device, skill  
1502 device, or ride device that is started and stopped by the purchaser or renter of the right to use or  
1503 operate the amusement device, skill device, or ride device.

1504 [~~(H9)~~] (120) (a) "Use" means the exercise of any right or power over tangible personal  
1505 property, a product transferred electronically, or a service under Subsection 59-12-103(1),  
1506 incident to the ownership or the leasing of that tangible personal property, product transferred  
1507 electronically, or service.

1508 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal  
1509 property, a product transferred electronically, or a service in the regular course of business and  
1510 held for resale.

1511 [~~(H20)~~] (121) "Value-added nonvoice data service" means a service:

1512 (a) that otherwise meets the definition of a telecommunications service except that a  
1513 computer processing application is used to act primarily for a purpose other than conveyance,  
1514 routing, or transmission; and

1515 (b) with respect to which a computer processing application is used to act on data or

1516 information:

- 1517 (i) code;
- 1518 (ii) content;
- 1519 (iii) form; or
- 1520 (iv) protocol.

1521 ~~[(121)]~~ (122) (a) Subject to Subsection ~~[(121)]~~ (122)(b), "vehicle" means the following  
1522 that are required to be titled, registered, or titled and registered:

- 1523 (i) an aircraft as defined in Section 72-10-102;
- 1524 (ii) a vehicle as defined in Section 41-1a-102;
- 1525 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1526 (iv) a vessel as defined in Section 41-1a-102.

1527 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1528 (i) a vehicle described in Subsection ~~[(121)]~~ (122)(a); or
- 1529 (ii) (A) a locomotive;
- 1530 (B) a freight car;
- 1531 (C) railroad work equipment; or
- 1532 (D) other railroad rolling stock.

1533 ~~[(122)]~~ (123) "Vehicle dealer" means a person engaged in the business of buying,  
1534 selling, or exchanging a vehicle as defined in Subsection ~~[(121)]~~ (122).

1535 ~~[(123)]~~ (124) (a) "Vertical service" means an ancillary service that:

- 1536 (i) is offered in connection with one or more telecommunications services; and
- 1537 (ii) offers an advanced calling feature that allows a customer to:
  - 1538 (A) identify a caller; and
  - 1539 (B) manage multiple calls and call connections.

1540 (b) "Vertical service" includes an ancillary service that allows a customer to manage a  
1541 conference bridging service.

1542 ~~[(124)]~~ (125) (a) "Voice mail service" means an ancillary service that enables a  
1543 customer to receive, send, or store a recorded message.

1544 (b) "Voice mail service" does not include a vertical service that a customer is required  
1545 to have in order to utilize a voice mail service.

1546 ~~[(125)]~~ (126) (a) Except as provided in Subsection ~~[(125)]~~ (126)(b), "waste energy

1547 facility" means a facility that generates electricity:

1548 (i) using as the primary source of energy waste materials that would be placed in a  
1549 landfill or refuse pit if it were not used to generate electricity, including:

1550 (A) tires;

1551 (B) waste coal; or

1552 (C) oil shale; and

1553 (ii) in amounts greater than actually required for the operation of the facility.

1554 (b) "Waste energy facility" does not include a facility that incinerates:

1555 (i) municipal solid waste;

1556 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1557 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1558 [~~(126)~~] (127) "Watercraft" means a vessel as defined in Section 73-18-2.

1559 [~~(127)~~] (128) "Wind energy" means wind used as the sole source of energy to produce  
1560 electricity.

1561 [~~(128)~~] (129) "ZIP Code" means a Zoning Improvement Plan Code assigned to a  
1562 geographic location by the United States Postal Service.

1563 Section 4. Section **59-12-123** is amended to read:

1564 **59-12-123. Definitions -- Collection, remittance, and payment of a tax on direct**  
1565 **mail.**

1566 (1) As used in this section:

1567 (a) "Advertising and promotional direct mail" means printed material:

1568 (i) that meets the definition of direct mail under Section 59-12-102; and

1569 (ii) if the primary purpose of the printed material is to:

1570 (A) attract public attention to a business, organization, person, or product; or

1571 (B) attempt to popularize, secure, or sell financial support for a business, organization,  
1572 person, or product.

1573 (b) For purposes of Subsection (1)(a), "product" means:

1574 (i) tangible personal property;

1575 (ii) a product transferred electronically; or

1576 (iii) a service.

1577 [~~(1)~~] (2) Notwithstanding Section 59-12-107 and except as provided in Subsection

1578 ~~[(6)]~~ (7), a purchaser of advertising and promotional direct mail ~~[that is not a holder of a direct~~  
 1579 ~~payment permit under Section 59-12-107.1 shall]~~ may provide to a seller at the time of a  
 1580 transaction:

1581 (a) a form:

1582 (i) prescribed by the commission; and

1583 (ii) indicating that the transaction is a direct mail transaction; ~~[or]~~

1584 (b) an agreement certificate of exemption indicating that the transaction is a direct mail  
 1585 transaction;

1586 (c) a direct payment permit under Section 59-12-107.1; or

1587 ~~[(b)]~~ (d) information that indicates the locations of the recipients to which the  
 1588 advertising and promotional direct mail is delivered.

1589 ~~[(2)]~~ (3) If a seller receives a form, certificate, or permit described in Subsection

1590 ~~[(1)(a);]~~ (2)(a), (b), or (c) from a purchaser:

1591 (a) if the seller acts in the absence of bad faith, the seller:

1592 ~~[(a)]~~ (i) is not liable to collect or remit ~~[an]~~ agreement sales and use tax for that  
 1593 transaction; and

1594 ~~[(b)]~~ (ii) shall keep a record of the form, certificate, or permit described in Subsection  
 1595 ~~[(1)(a)]~~ (2)(a), (b), or (c) for three years ~~[from]~~ after the date the seller files a return with the  
 1596 commission reporting that transaction~~[-];~~ and

1597 ~~[(3) The]~~ (b) the purchaser that provides the form, certificate, or permit described in  
 1598 Subsection ~~[(1)]~~ (2)(a), (b), or (c) shall:

1599 ~~[(a)]~~ (i) determine the amount of ~~[an]~~ agreement sales and use tax due on the  
 1600 transaction ~~[in accordance with Sections 59-12-211 and 59-12-212]~~ in the location where the  
 1601 advertising and promotional direct mail is delivered; and

1602 ~~[(b)]~~ (ii) report and remit to the commission the ~~[agreement sales and use tax due on~~  
 1603 ~~the transaction]~~ amount described in Subsection (3)(b)(i) in accordance with Section  
 1604 59-12-107.

1605 (4) ~~[The]~~ A form or certificate described in Subsection ~~[(1)(a)]~~ (2)(a) or (b) is in effect  
 1606 for all transactions between the seller described in Subsection ~~[(2)(a)]~~ (3) and the purchaser  
 1607 described in Subsection ~~[(1)]~~ (3):

1608 (a) beginning ~~[when]~~ on the date the seller receives the form or certificate in

1609 accordance with Subsection (2)(a) or (b); and

1610 (b) ending ~~[when]~~ on the date the purchaser revokes the form or certificate in writing.

1611 (5) (a) If a seller receives the information described in Subsection ~~[(1)(b)]~~ (2)(d) from a  
1612 purchaser that indicates the locations of the recipients to which the advertising and promotional  
1613 direct mail is delivered, the seller shall collect and remit agreement sales and use tax to the  
1614 commission in accordance with the information the purchaser provides.

1615 (b) If a seller collects and remits ~~[an]~~ agreement sales and use tax to the commission in  
1616 accordance with Subsection (5)(a), the seller is not liable for any further obligation to collect or  
1617 remit ~~[an]~~ agreement sales and use tax to the commission on the transaction unless the seller  
1618 acts in bad faith.

1619 ~~[(6) If a purchaser of direct mail provides a seller with a direct payment permit in~~  
1620 ~~accordance with Section 59-12-107.1, the purchaser may not be required to provide to the~~  
1621 ~~seller:]~~

1622 ~~[(a) the form required by Subsection (1)(a); or]~~

1623 ~~[(b) the information required by Subsection (1)(b).]~~

1624 ~~[(7) A seller shall collect and remit an agreement sales and use tax in accordance with~~  
1625 ~~Section 59-12-107 if a purchaser of direct mail does not provide the seller with:]~~

1626 ~~[(a) a direct payment permit in accordance with Section 59-12-107.1; or]~~

1627 ~~[(b) the:]~~

1628 ~~[(i) form required by Subsection (1)(a); or]~~

1629 ~~[(ii) information required by Subsection (1)(b).]~~

1630 (6) If a purchaser of advertising and promotional direct mail described in Subsection  
1631 (2) does not provide the seller with the form, certificate, permit, or information described in  
1632 Subsection (2) at the time of the transaction, the seller shall:

1633 (a) determine the amount of agreement sales and use tax due on the transaction in  
1634 accordance with Subsection 59-12-211(6); and

1635 (b) collect and remit to the commission the amount described in Subsection (6)(a) in  
1636 accordance with Section 59-12-107.

1637 (7) (a) Except as provided in Subsection (7)(b), this Subsection (7) applies to direct  
1638 mail if the direct mail is delivered or distributed:

1639 (i) from a location within the state; and

1640 (ii) to a location within the state.  
1641 (b) A purchaser of direct mail may provide a seller with:  
1642 (i) a form:  
1643 (A) prescribed by the commission; and  
1644 (B) indicating that the transaction is a direct mail transaction;  
1645 (ii) an agreement certificate of exemption indicating that the transaction is a direct mail  
1646 transaction; or  
1647 (iii) a direct payment permit under Section 59-12-107.1.  
1648 (c) If a seller receives a form, certificate, or permit described in Subsection (7)(b) from  
1649 a purchaser:  
1650 (i) if the seller acts in the absence of bad faith, the seller:  
1651 (A) is not liable to collect or remit agreement sales and use tax for that transaction; and  
1652 (B) shall keep a record of the form, certificate, or permit described in Subsection (7)(b)  
1653 for three years after the date the seller files a return with the commission reporting the  
1654 transaction; and  
1655 (ii) the purchaser that provides the form, certificate, or permit described in Subsection  
1656 (7)(b) shall:  
1657 (A) determine the amount of agreement sales and use tax due on the transaction in  
1658 accordance with Section 59-12-211.1; and  
1659 (B) report and remit to the commission the amount described in Subsection  
1660 (7)(c)(ii)(A) in accordance with Section 59-12-107.  
1661 (d) Except as provided in Subsection (7)(f), if a purchaser of direct mail described in  
1662 Subsection (7)(b) does not provide the seller with the form, certificate, or permit described in  
1663 Subsection (7)(b) at the time of the transaction, the seller shall:  
1664 (i) determine the amount of agreement sales and use tax due on the transaction in  
1665 accordance with Subsection 59-12-211(6);  
1666 (ii) collect and remit to the commission the amount described in Subsection (7)(d)(i) in  
1667 accordance with Section 59-12-107; and  
1668 (iii) is not liable for any additional sales and use tax under this chapter.  
1669 (e) If a seller knows that direct mail will be delivered or distributed to a location in  
1670 another state, the seller shall:

1671 (i) determine the amount of agreement sales and use tax due on the transaction in  
1672 accordance with Subsection (5); and

1673 (ii) collect and remit to the commission the amount described in Subsection (7)(e)(i) in  
1674 accordance with Section 59-12-107.

1675 (f) A seller may:

1676 (i) elect to determine the amount of agreement sales and use tax due on the sale of  
1677 advertising and promotional direct mail in accordance with Subsection (5) or (6); and

1678 (ii) collect and remit to the commission the amount described in Subsection (7)(f)(i) in  
1679 accordance with Section 59-12-107.

1680 (8) A form, certificate, or permit described in Subsection (7)(b) is in effect for all  
1681 transactions between a seller and a purchaser:

1682 (a) beginning on the date the seller receives the form, certificate, or permit in  
1683 accordance with Subsection (7)(b); and

1684 (b) ending on the date the purchaser revokes the form, certificate, or permit in writing.

1685 (9) This section applies to:

1686 (a) a transaction that is a sale of a service only if the service is an integral part of the  
1687 production and distribution of direct mail; or

1688 (b) a bundled transaction that includes advertising and promotional direct mail only if  
1689 the primary purpose of the transaction is the sale of tangible personal property, a product  
1690 transferred electronically, or a service that is advertising and promotional direct mail.

1691 (10) This section does not apply to a transaction that includes:

1692 (a) the development of billing information; or

1693 (b) the provision of any data processing service that is more than incidental regardless  
1694 of whether advertising and promotional direct mail is included in the same mailing.

1695 Section 5. Section **59-12-211** is amended to read:

1696 **59-12-211. Definitions -- Location of certain transactions -- Reports to**  
1697 **commission -- Direct payment provision for a seller making certain purchases --**  
1698 **Exceptions.**

1699 (1) As used in this section:

1700 (a) (i) "Receipt" and "receive" mean:

1701 (A) taking possession of tangible personal property;

- 1702 (B) making first use of a service; or
- 1703 (C) for a product transferred electronically, the earlier of:
- 1704 (I) taking possession of the product transferred electronically; or
- 1705 (II) making first use of the product transferred electronically.
- 1706 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
- 1707 of a purchaser.
- 1708 (b) "Transportation equipment" means:
- 1709 (i) a locomotive or rail car that is used to carry a person or property in interstate
- 1710 commerce;
- 1711 (ii) a truck or truck-tractor:
- 1712 (A) with a gross vehicle weight rating of 10,001 pounds or more;
- 1713 (B) registered under Section 41-1a-301; and
- 1714 (C) operated under the authority of a carrier authorized and certificated:
- 1715 (I) by the United States Department of Transportation or another federal authority; and
- 1716 (II) to engage in carrying a person or property in interstate commerce;
- 1717 (iii) a trailer, semitrailer, or passenger bus that is:
- 1718 (A) registered under Section 41-1a-301; and
- 1719 (B) operated under the authority of a carrier authorized and certificated:
- 1720 (I) by the United States Department of Transportation or another federal authority; and
- 1721 (II) to engage in carrying a person or property in interstate commerce;
- 1722 (iv) an aircraft that is operated by an air carrier authorized and certificated:
- 1723 (A) by the United States Department of Transportation or another federal or foreign
- 1724 authority; and
- 1725 (B) to engage in carrying a person or property in interstate commerce; or
- 1726 (v) a container designed for use on, or a component part attached or secured on an item
- 1727 of equipment listed in, Subsections (1)(b)(i) through (iv).
- 1728 (2) Except as provided in Subsections (8) and (13), if tangible personal property, a
- 1729 product transferred electronically, or a service that is subject to taxation under this chapter is
- 1730 received by a purchaser at a business location of a seller, the location of the transaction is the
- 1731 business location of the seller.
- 1732 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),

1733 and (13), if tangible personal property, a product transferred electronically, or a service that is  
1734 subject to taxation under this chapter is not received by a purchaser at a business location of a  
1735 seller, the location of the transaction is the location where the purchaser takes receipt of the  
1736 tangible personal property or service.

1737 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),  
1738 and (13), if Subsection (2) or (3) does not apply, the location of the transaction is the location  
1739 indicated by an address for or other information on the purchaser if:

1740 (a) the address or other information is available from the seller's business records; and  
1741 (b) use of the address or other information from the seller's records does not constitute  
1742 bad faith.

1743 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),  
1744 (11), and (13), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the  
1745 location indicated by an address for the purchaser if:

1746 (i) the address is obtained during the consummation of the transaction; and  
1747 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

1748 (b) An address used under Subsection (5)(a) includes the address of a purchaser's  
1749 payment instrument if no other address is available.

1750 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),  
1751 and (13), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient  
1752 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the  
1753 location indicated by the address from which:

1754 (a) except as provided in Subsection (6)(b), for tangible personal property that is  
1755 subject to taxation under this chapter, the tangible personal property is shipped;

1756 (b) for computer software delivered electronically or for a product transferred  
1757 electronically that is subject to taxation under this chapter, the computer software or product  
1758 transferred electronically is first available for transmission by the seller; or

1759 (c) for a service that is subject to taxation under this chapter, the service is provided.

1760 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP  
1761 Code that is located within two or more local taxing jurisdictions.

1762 (b) If the location of a transaction determined under Subsections (3) through (6) is in a  
1763 shared ZIP Code, the location of the transaction is:

1764 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement  
1765 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest  
1766 agreement combined tax rate; or

1767 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax  
1768 rate for the shared ZIP Code, the local taxing jurisdiction that:

1769 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1770 (B) has located within the local taxing jurisdiction the largest number of street  
1771 addresses within the shared ZIP Code.

1772 (c) ~~[For]~~ Notwithstanding any provision under this chapter authorizing or requiring the  
1773 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales  
1774 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed  
1775 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b)  
1776 [~~notwithstanding~~].

1777 [~~(i) Section 59-12-204;~~]

1778 [~~(ii) Section 59-12-401;~~]

1779 [~~(iii) Section 59-12-402;~~]

1780 [~~(iv) Section 59-12-501;~~]

1781 [~~(v) Section 59-12-502;~~]

1782 [~~(vi) Section 59-12-703;~~]

1783 [~~(vii) Section 59-12-802;~~]

1784 [~~(viii) Section 59-12-804;~~]

1785 [~~(ix) Section 59-12-1001;~~]

1786 [~~(x) Section 59-12-1102;~~]

1787 [~~(xi) Section 59-12-1302;~~]

1788 [~~(xii) Section 59-12-1402;~~]

1789 [~~(xiii) Section 59-12-1503;~~]

1790 [~~(xiv) Section 59-12-1703; or]~~

1791 [~~(xv) Section 59-12-1802;~~]

1792 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1793 commission may make rules:

1794 (i) providing for the circumstances under which a seller has exercised due diligence in

1795 determining the nine-digit ZIP Code for an address; or

1796 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction  
1797 within which a transaction is located if a seller is unable to determine the local taxing  
1798 jurisdiction within which the transaction is located under Subsection (7)(b).

1799 (8) The location of a transaction made with a direct payment permit described in  
1800 Section 59-12-107.1 is the location where receipt of the tangible personal property, product, or  
1801 service by the purchaser occurs.

1802 (9) The location of a purchase of direct mail is the location [~~described in Subsection~~  
1803 ~~(6), if the purchaser of the direct mail:] determined in accordance with Section 59-12-123.  
1804 ~~[(a) has not been issued a direct payment permit under Section 59-12-107.1; and]~~  
1805 ~~[(b) does not provide the seller the form or information described in Subsection~~  
1806 ~~59-12-123(1).]~~~~

1807 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction  
1808 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within  
1809 which:

1810 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)  
1811 through (6), (8), or (9) is located; or

1812 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)  
1813 through (6), (8), or (9) is located if:

1814 (A) a nine-digit ZIP Code is not available for the location determined under  
1815 Subsections (3) through (6), (8), or (9); or

1816 (B) after exercising due diligence, a seller or certified service provider is unable to  
1817 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),  
1818 (8), or (9).

1819 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1820 commission may make rules for determining the local taxing jurisdiction within which a  
1821 transaction is located if a seller or certified service provider is unable to determine the local  
1822 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1823 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a  
1824 transaction commenced by a florist that transmits an order:

1825 (i) by:

- 1826 (A) telegraph;
- 1827 (B) telephone; or
- 1828 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and
- 1829 (ii) for delivery to another place:
- 1830 (A) in this state; or
- 1831 (B) outside this state.
- 1832 (b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and
- 1833 ending on December 31, 2009, the location of a florist delivery transaction is the business
- 1834 location of the florist that commences the florist delivery transaction.
- 1835 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1836 commission may by rule:
- 1837 (i) define:
- 1838 (A) "business location"; and
- 1839 (B) "florist";
- 1840 (ii) define what constitutes a means of communication similar to Subsection
- 1841 (11)(a)(i)(A) or (B); and
- 1842 (iii) provide procedures for determining when a transaction is commenced.
- 1843 (12) (a) A tax collected under this chapter shall be reported to the commission on a
- 1844 form that identifies the location of each transaction that occurs during the return filing period.
- 1845 (b) The form described in Subsection (12)(a) shall be filed with the commission as
- 1846 required under this chapter.
- 1847 (13) This section does not apply to:
- 1848 (a) amounts charged by a seller for:
- 1849 (i) telecommunications service; or
- 1850 (ii) the retail sale or transfer of:
- 1851 (A) a motor vehicle other than a motor vehicle that is transportation equipment;
- 1852 (B) an aircraft other than an aircraft that is transportation equipment;
- 1853 (C) a watercraft;
- 1854 (D) a modular home;
- 1855 (E) a manufactured home; or
- 1856 (F) a mobile home; or

1857 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal  
1858 property other than tangible personal property that is transportation equipment;

1859 (b) a tax [~~paid under this chapter:~~] a person pays in accordance with Subsection  
1860 59-12-107(1)(d); or

1861 [~~(i) by a seller; and]~~

1862 [~~(ii) for the seller's purchases; or]~~

1863 (c) a retail sale of tangible personal property or a product transferred electronically if:

1864 (i) the seller receives the order for the tangible personal property or product transferred  
1865 electronically in this state;

1866 (ii) receipt of the tangible personal property or product transferred electronically by the  
1867 purchaser or the purchaser's donee occurs in this state;

1868 (iii) the location where receipt of the tangible personal property or product transferred  
1869 electronically by the purchaser occurs is determined in accordance with Subsections (3)  
1870 through (5); and

1871 (iv) at the time the seller receives the order, the record keeping system that the seller  
1872 uses to calculate the proper amount of tax imposed under this chapter captures the location  
1873 where the order is received.

1874 Section 6. Section **59-12-211.1** is enacted to read:

1875 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1876 (1) Subject to Subsection (2), a person that is required by Subsection 59-12-107(1)(d)  
1877 to pay a use tax on a transaction shall report the location of that transaction at the person's  
1878 location.

1879 (2) For purposes of Subsection (1), if a person has more than one location in this state,  
1880 the person shall report the location of the transaction at the location at which tangible personal  
1881 property, a product transferred electronically, or a service is received.

1882 Section 7. **Effective date.**

1883 This bill takes effect on July 1, 2010.

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**Legislative Review Note**  
as of 2-12-10 4:43 PM

**Office of Legislative Research and General Counsel**

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**H.B. 349 - Sales and Use Tax Amendments**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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